

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JAIME HUGHES, MARY CORONADO,
AUDREY MILLS, VIRGINIA
CARDOZA, KAREN DELUCCHI,
JOLENE GIBSON, BARBARA
HEDRICK, SUZANNE HENNING, WILL
JOHNSON, LINDA MAGER, MARIA
MACIAS, CARL MORROW, CANDICE
PRICE, VIRGINIA RUIZ, CARMEN
SIMMONS, TREASA TREDWELL,
MARINA TORRES, SHEILA WALL,
LORIE WEISS and KATHI LYNN
CORONADO,

Plaintiffs,

v.

CITY OF STOCKTON and DOES 1
through 100, in their
individual capacities,

Defendants.

NO. CIV. S 03-0166 MCE DAD

MEMORANDUM AND ORDER

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3 Defendant City of Stockton ("City") has submitted a Bill of
4 Costs¹ in the above-referenced matter, pursuant to 28 U.S.C. §
5 1920, following a jury verdict in favor of the City reached on
6 July 8, 2005. While Plaintiffs do not dispute the City's
7 entitlement to costs as the prevailing party in this litigation,
8 they do take issue with certain categories of costs claimed by
9 the City, arguing that those items are unreasonable and/or
10 unnecessary and should consequently not be allowed. The Court
11 has now reviewed the City's Bill of Costs, along with the
12 documentation submitted in support thereof, and has further
13 reviewed Plaintiff's objections. Costs are awarded to the City
14 as set forth below.

15
16 **STANDARD**
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18 Under Federal Rule of Civil Procedure 54(d), the prevailing
19 party in a lawsuit may recover its costs "unless the court
20 otherwise directs". As this language suggests, the ultimate
21 decision on whether to award costs is a matter within the court's
22 discretion. Association of Mexican-American Educators v. State
23 of Calif., 231 F.3d 572, 591-92 (9th Cir. 2000). If the Court
24 declines to award costs as requested by the prevailing party,
25 however, it should specify its reasons for doing so. Berkla v.
26

27 ¹The City's initial Bill of Costs was filed on July 18,
28 2005. That costs bill was superseded by an Amended Bill of Costs
filed on July 20, 2005.

1 Corel Corp., 302 F.3d 909. 921 (9th Cir. 2002). Claims for cost
2 items not properly documented will generally not be allowed.
3 English v. Colorado Dept. Of Corrections, 248 F.3d 1002, 1013
4 (10th Cir. 2001).

5
6 **ANALYSIS**
7

8 Turning to the specific items of costs claimed by the City,
9 Plaintiffs first take issue with the costs incurred by the City
10 in obtaining the transcripts of depositions taken in this case.
11 According to Plaintiffs, it was not necessary for the City to
12 have deposed all twenty Plaintiffs in this action. Plaintiffs
13 therefore contend that the transcript costs for those depositions
14 are unreasonable. Plaintiffs further argue that costs associated
15 with the provision of ASCII disks, as well as rough edit disks,
16 should not be allowed. Plaintiffs' objections in this regard
17 lack merit. The depositions obtained were reasonable under the
18 circumstances of this case, and the costs incurred are
19 appropriate. Court reporter/transcript costs for the depositions
20 will be awarded as requested in the amount of \$11,816.30.

21 The next major item of claimed costs pertains to witness
22 expenses, both with respect to the service of subpoenas for
23 witness attendance at trial and per diem fees and other expense
24 payable for such attendance. The arguments advanced by
25 Plaintiffs in contesting those expenses are also without merit.
26 First, although Plaintiffs correctly point out that witness fees
27 and expenses cannot be claimed by prevailing parties themselves
28 for appearing at trial, the authority advanced by Plaintiffs does

1 not pertain to such fees/expenses payable to an adverse party for
2 testifying at the prevailing party's behest. In Evanow v. M/V
3 Neptune, 163 F.3d 1108 (9th Cir. 1998), for example, the witness
4 fees claimed were for expenses by various prevailing parties. In
5 the present case, on the other hand, the expenses relate to the
6 City's need to subpoena several of the plaintiffs as adverse
7 parties. Second, the fact that some of the witnesses subpoenaed
8 were not ultimately called to testify at trial does not mean that
9 the expenses so incurred were unnecessary. Such witnesses are
10 entitled to compensation for their readiness to testify, and
11 costs are recoverable on that basis. See Haroco, Inc. v.
12 American National Bank and Trust Co. Of Chicago, 38 F.3d 1429,
13 1442 (7th Cir. 1994).

14 Although Plaintiffs' substantive arguments against the award
15 of witness fees/costs in this matter are unavailing,² certain of
16 the costs claimed have nonetheless not been substantiated through
17 any documentation provided by the City and will consequently be
18 disallowed. In its itemization of witness fees on the reverse of
19 the Amended Bill for Costs, for example, witness fees are sought
20 for Wally Storm and for George Bist, although no documentation of
21

22 ²Another argument advanced by Plaintiffs is that certain of
23 the subpoena fees were in excess of the amount that would have
24 been charged for service by the United States Marshall (at
25 \$125.64, including mileage and driving time to Stockton) and
26 should be disallowed on that basis. Examination of the service
27 fees in question, however, for subpoenaing Plaintiffs Audrey
28 Mills and Suzanne Henning) show that advanced witness fees in the
amount of \$63.52 for included in both invoices (for \$179.87
each). Since the witness fees themselves are separately
recoverable, the net amount of the invoices in question for
subpoening Ms. Mills and Ms. Henning is less than the \$125.64
figure in any event. Consequently, Plaintiffs' objection to
those costs is ill-taken.

1 such expense was provided.³ In addition, the documentation
2 provided appears to be at odds with the apportionment between
3 subpoena fees and witness fees and costs reflected in the Amended
4 Bill of Costs itself. The amounts documented are for \$940.20 for
5 service of subpoenas and \$633.35 for witness expenses. Those
6 amounts are awarded.

7 The final, and most significant, area of disagreement
8 pertaining to awardable costs pertains to fees for
9 exemplification and copies of papers necessarily obtained for use
10 in this case. While such fees are unquestionably proper under 28
11 U.S.C. § 1920(4), Plaintiffs argue for a narrow reading of that
12 section, claiming that costs incurred for tabs, binders, and
13 exhibit blow-ups cannot be incorporated within "exemplification
14 and copies of papers." The Ninth Circuit, however, in Maxwell v.
15 Hapag-Lloyd Aktiengesellschaft, Hamburg, 862 F.2d 767, 770 (9th
16 Cir. 2003), has adopted a broad construction of the term
17 "exemplification" that includes all types of demonstrative
18 evidence, including photographs and graphic aids, that are
19 necessarily obtained for use in the case.

20 In this case, the Court required that tabs and binders be
21 provided in organizing the extensive proposed exhibits in this
22 case. As such, those costs are recoverable. In addition, fees
23 incurred in preparing the exhibits for trial, such as re-binds
24 and numbering devices, are also proper.

25 Although the Ninth Circuit's Maxwell decision indicates that
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27 ³The City's Amended Memorandum of Costs (as opposed to the
28 Amended Bill of Costs), however, does not include witness fees
for Storm or Bist so they may have been inadvertently included in
the costs bill itself.

1 photographic blow-ups and graphic aids are at least potentially
2 recoverable, Plaintiffs argue that extensive blow-ups were
3 unnecessary in this case due to courtroom equipment and
4 technology permitting the projection of large-scale images
5 without physically amplifying the size of the original materials.
6 In addition, Plaintiffs contend that the City used only three
7 actual blow-ups in any event, and then only during closing
8 argument.

9 These arguments are well taken. Given the courtroom
10 configuration, it was not reasonably necessary to incur expense
11 in the amount of \$3,407.50 for some 28 exhibit enlargements to
12 poster size. Moreover, and as stated above, those exhibits were
13 largely unused in any event. The expenses incurred for preparing
14 those blow-ups are disallowed.

15 In addition, the City seeks reimbursement for 41.75 hours of
16 "computer illustration" at \$175.00 per hour. The City provides
17 no explanation whatsoever as to just what that entails, and
18 without such detail the Court cannot determine that such expenses
19 were reasonable and necessarily incurred in presenting the City's
20 case. Even were the proper explanation provided, this Court has
21 grave concerns about whether hourly expenses of this magnitude
22 may properly be regarded as a recoverable cost under Section
23 1920, as opposed to fees incurred in simply preparing the case
24 for trial, which are akin to attorneys' fees and would not be
25 allowable as costs under the statute. Consequently, the City's
26 claimed costs of \$7,306.25 for "computer illustration" will not
27 be permitted.

28 //

CONCLUSION

Based on the foregoing, costs in this matter are taxed in favor of the City as follows:

Fees for Service of Subpoenas	\$ 940.20
Court Reporter/Transcript Fees	\$ 11,816.30
Printing/Exemplification Costs	\$ 9,225.09
Witness Fees/Costs	\$ 633.35

TOTAL: \$ 22,614.94

IT IS SO ORDERED.

DATED: November 2, 2005



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE